

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

HENRY NIX,

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Plaintiff,

*

vs.

CASE NO. 1:17-cv-286-LG-RHW

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WAL-MART STORES EAST, L.P.

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Defendants.

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NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Defendant, WAL-MART STORES EAST, L.P. (“Wal-Mart”) gives notice pursuant to 28 U.S.C. §§ 1441 and 1446 that this cause is hereby removed from the Circuit Court of George County, Mississippi, to the United States District Court for the Southern District of Mississippi, Southern Division. As grounds for this removal, Defendants show as follows:

1. An action was commenced against Wal-Mart in the Circuit Court of Harrison County, Mississippi, entitled “*Henry Nix, Plaintiff v. Wal-Mart Stores East, L.P.*” Civil Action No. 2017-0191 (1). The Complaint filed in State Court is attached hereto as “Exhibit A”.

2. According to the Circuit Clerk’s office for the Circuit Court of George County, Mississippi, service of the initial pleading setting forth Plaintiffs’ claims for relief was affected upon Wal-Mart on September 12, 2017, which was Wal-Mart’s first actual notice of this action.

3. This notice of removal is filed in the United States District Court for the Southern District of Mississippi, Southern Division, within thirty days of receipt by the Defendant of the initial pleading setting forth the claim for relief upon which Plaintiff's action is based in accordance with 28 U.S.C. § 1446(b)(1). The Circuit Court of George County, Mississippi, is within this Court's district and division; therefore, this action is properly removable to this Court under 28 U.S.C. § 1441(a) & (b).

4. This Court has diversity jurisdiction over this matter pursuant to the provisions of 28 U.S.C. § 1332 since the parties are diverse and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

5. Plaintiff is now and at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, a citizen of the State of Mississippi. In his Complaint, Plaintiff states that he is a resident of Mississippi. (Complaint, ¶ 1.)

6. Wal-Mart Stores East, L.P. is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, a limited partnership whose sole limited partner is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, WSE Investment, LLC and whose sole general partner is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, WSE Management, LLC. Wal-Mart Stores East, L.P. is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, organized under the laws of the State of Delaware, maintaining its principal place of business in Bentonville, Arkansas. WSE Investment, LLC is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, a wholly-owned subsidiary of Wal-Mart Stores East, LLC (i.e. the only member of WSE Investment, LLC is Wal-Mart Stores East, LLC), and was, at all times material hereto, including at the time of the commencement of this action and this Notice of

Removal, organized under the laws of the State of Delaware, maintaining its principal place of business in Bentonville, Arkansas. WSE Management, LLC is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, likewise a wholly-owned subsidiary of Wal-Mart Stores East, LLC, (i.e. the only member of WSE Management, LLC is Wal-Mart Stores East, LLC) and was, at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, organized under the laws of the State of Delaware, maintaining its principal place of business in Bentonville, Arkansas. Wal-Mart Stores East, LLC, is now and was at all times material hereto, including at the time of the commencement of this action and this Notice of Removal, a wholly-owned subsidiary of Wal-Mart Stores, Inc., (i.e. the only member of Wal-Mart Stores East, LLC is Wal-Mart Stores, Inc.) organized under the laws of the State of Arkansas, maintaining its principal place of business in Bentonville, Arkansas.

7. Plaintiff's Complaint seeks actual/compensatory damages for personal injuries to Plaintiff, Henry Nix, including "severe injuries to his right knee and left hip, medical expenses associated with his injuries, mental anguish and emotional distress, pain and suffering, permanent disability, loss of enjoyment of life, future medical expenses, and inability to perform home and job duties resulting in lost wages and household services". (Complaint, ¶ 18.). Plaintiff seeks compensation in the amount not less than one hundred fifty thousand dollars (\$150,000.00) (Complaint, unnumbered paragraph following ¶ 18.).

8. This action may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441, as amended, because this action is a civil action of which the United States District Courts have original jurisdiction under 28 U.S.C. § 1332.

9. Pursuant to 28 U.S.C. §1446 (d), a true and correct copy of this Notice of Removal is filed with the Clerk of the Circuit Court of George County, Mississippi, and a written notice of this removal has been served on all adverse parties as required by law.

12. If any questions arise as to the propriety of the removal of this action, Defendant requests the opportunity to present a brief and oral argument in support of its position that this cause is removable.

Respectfully submitted this October 11, 2017

/s/ W. Pemble DeLashmet
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CERTIFICATE OF SERVICE

I hereby certify that I have on this day October 11th, 2017 served a copy of the foregoing pleading upon counsel as listed below by depositing the same in the U. S. Mail, postage prepaid and properly addressed.

Matthew S. Lott
The Lott Law Firm
P.O. Box 1708
Pascagoula, MS 39568

/s/ W. Pemble DeLashmet
OF COUNSEL